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Chief Clerk of the House

FILED FEB 24 2005

By: DRIVER

H.B. No. 1589

A BILL TO BE ENTITLED

AN ACT

relating to the administration of polygraph examinations to certain  
applicants for positions in the Department of Public Safety.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 411.007(c), Government Code, is amended  
to read as follows:

(c) An applicant for a position in the department must be a  
United States citizen. An applicant may not be questioned  
regarding the applicant's political affiliation or religious faith  
or beliefs. The department may not prohibit an officer or employee  
of the department, while off duty and out of uniform, from placing a  
bumper sticker endorsing political activities or a candidate for  
political office on a personal vehicle, placing a campaign sign in  
the person's private yard, making a political contribution, or  
wearing a badge endorsing political activities or a candidate. An  
officer commissioned by the department may not be suspended,  
terminated, or subjected to any form of discrimination by the  
department because of the refusal of the officer to take a polygraph  
examination. Section 411.0074 does not authorize the department to  
require an officer commissioned by the department to take a  
polygraph examination.

SECTION 2. Subchapter A, Chapter 411, Government Code, is  
amended by adding Section 411.0074 to read as follows:

Sec. 411.0074. POLYGRAPH EXAMINATIONS FOR CERTAIN

1 APPLICANTS. (a) This section does not apply to:

2 (1) an applicant who is currently a peace officer of  
3 the department commissioned by the department; or

4 (2) an applicant for a police communications operator  
5 position who is currently employed by the department in another  
6 police communications operator position.

7 (b) The department shall require each applicant for a peace  
8 officer or police communications operator position in the  
9 department to submit to the administration of a polygraph  
10 examination.

11 (c) The polygraph examination required by this section may  
12 only be administered by a polygraph examiner licensed under Chapter  
13 1703, Occupations Code, who:

14 (1) is a peace officer commissioned by the department;  
15 or

16 (2) has a minimum of two years of experience  
17 conducting preemployment polygraph examinations for a law  
18 enforcement agency.

19 (d) The department and the polygraph examiner shall  
20 maintain the confidentiality of the results of a polygraph  
21 examination administered under this section, except that:

22 (1) the department and the polygraph examiner may  
23 disclose the results in accordance with Section 1703.306,  
24 Occupations Code; and

25 (2) notwithstanding Section 1703.306, Occupations  
26 Code, the department may disclose any admission of criminal conduct  
27 made during the course of an examination to another appropriate

1 governmental entity.

2 (e) The department shall adopt reasonable rules for the  
3 administration of a polygraph examination under this section in  
4 accordance with the guidelines published by the American Polygraph  
5 Association or the American Association of Police Polygraphists.

6 (f) The department shall use the results of a polygraph  
7 examination under this section as a factor in determining whether  
8 to commission a peace officer or employ an applicant for the  
9 position of police communications operator.

10 SECTION 3. Section 411.0074, Government Code, as added by  
11 this Act, applies only to an applicant who submits an application  
12 for a position in the Department of Public Safety of the State of  
13 Texas on or after the effective date of this Act.

14 SECTION 4. This Act takes effect immediately if it receives  
15 a vote of two-thirds of all the members elected to each house, as  
16 provided by Section 39, Article III, Texas Constitution. If this  
17 Act does not receive the vote necessary for immediate effect, this  
18 Act takes effect September 1, 2005.

# HOUSE COMMITTEE REPORT

05 APR 13 PM 10: 52  
HOUSE OF REPRESENTATIVES

1<sup>st</sup> Printing

By: Driver

H.B. No. 1589

A BILL TO BE ENTITLED

AN ACT

relating to the administration of polygraph examinations to certain applicants for positions in the Department of Public Safety.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 411.007(c), Government Code, is amended to read as follows:

(c) An applicant for a position in the department must be a United States citizen. An applicant may not be questioned regarding the applicant's political affiliation or religious faith or beliefs. The department may not prohibit an officer or employee of the department, while off duty and out of uniform, from placing a bumper sticker endorsing political activities or a candidate for political office on a personal vehicle, placing a campaign sign in the person's private yard, making a political contribution, or wearing a badge endorsing political activities or a candidate. An officer commissioned by the department may not be suspended, terminated, or subjected to any form of discrimination by the department because of the refusal of the officer to take a polygraph examination. Section 411.0074 does not authorize the department to require an officer commissioned by the department to take a polygraph examination.

SECTION 2. Subchapter A, Chapter 411, Government Code, is amended by adding Section 411.0074 to read as follows:

Sec. 411.0074. POLYGRAPH EXAMINATIONS FOR CERTAIN

1 APPLICANTS. (a) This section does not apply to:

2 (1) an applicant who is currently a peace officer of  
3 the department commissioned by the department; or

4 (2) an applicant for a police communications operator  
5 position who is currently employed by the department in another  
6 police communications operator position.

7 (b) The department shall require each applicant for a peace  
8 officer or police communications operator position in the  
9 department to submit to the administration of a polygraph  
10 examination.

11 (c) The polygraph examination required by this section may  
12 only be administered by a polygraph examiner licensed under Chapter  
13 1703, Occupations Code, who:

14 (1) is a peace officer commissioned by the department;  
15 or

16 (2) has a minimum of two years of experience  
17 conducting preemployment polygraph examinations for a law  
18 enforcement agency.

19 (d) The department and the polygraph examiner shall  
20 maintain the confidentiality of the results of a polygraph  
21 examination administered under this section, except that:

22 (1) the department and the polygraph examiner may  
23 disclose the results in accordance with Section 1703.306,  
24 Occupations Code; and

25 (2) notwithstanding Section 1703.306, Occupations  
26 Code, the department may disclose any admission of criminal conduct  
27 made during the course of an examination to another appropriate

1 governmental entity.

2 (e) The department shall adopt reasonable rules for the  
3 administration of a polygraph examination under this section in  
4 accordance with the guidelines published by the American Polygraph  
5 Association or the American Association of Police Polygraphists.

6 (f) The department shall use the results of a polygraph  
7 examination under this section as a factor in determining whether  
8 to commission a peace officer or employ an applicant for the  
9 position of police communications operator.

10 SECTION 3. Section 411.0074, Government Code, as added by  
11 this Act, applies only to an applicant who submits an application  
12 for a position in the Department of Public Safety of the State of  
13 Texas on or after the effective date of this Act.

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15 a vote of two-thirds of all the members elected to each house, as  
16 provided by Section 39, Article III, Texas Constitution. If this  
17 Act does not receive the vote necessary for immediate effect, this  
18 Act takes effect September 1, 2005.

COMMITTEE AMENDMENT NO. 1

Amend H.B. No. 1589 as follows:

(1) On page 2, strike lines 7-10 and substitute the following:

(b) Before commissioning an applicant as a peace officer or employing an applicant for a police communications operator position, the department shall require the applicant to submit to the administration of a polygraph examination in accordance with rules adopted under Subsection (e).

(2) On page 3, strike lines 2-5 and substitute the following:

(e) The department shall adopt reasonable rules to specify the point in the hiring process at which the department shall require a polygraph examination to be administered under this section and the manner in which the examination shall be administered. Rules relating to the administration of a polygraph examination shall be adopted in accordance with the guidelines published by the American Polygraph Association or the American Association of Police Polygraphists.

79R9669 KEG-F

Jackson

COMMITTEE REPORT

The Honorable Tom Craddick  
Speaker of the House of Representatives

03/22/05  
(date)

Sir:  
We, your COMMITTEE ON LAW ENFORCEMENT  
to whom was referred HB 1589 have had the same under consideration and beg to report  
back with the recommendation that it

- ( ) do pass, without amendment.
- (X) do pass, with amendment(s).
- ( ) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.
- (X) yes ( ) no A fiscal note was requested.
- ( ) yes (X) no A criminal justice policy impact statement was requested.
- ( ) yes (X) no An equalized educational funding impact statement was requested.
- ( ) yes (X) no An actuarial analysis was requested.
- ( ) yes (X) no A water development policy impact statement was requested.
- ( ) yes (X) no A tax equity note was requested.
- ( ) The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

For Senate Measures: House Sponsor \_\_\_\_\_

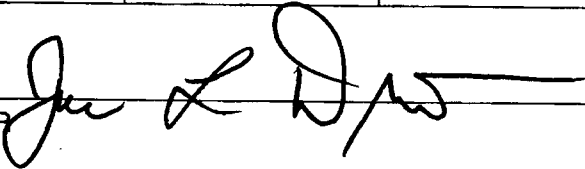
Joint Sponsors: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Co-Sponsors: \_\_\_\_\_

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Driver, Chair	X			
Jackson, Vice-chair	X			
Burnam				X
Frost	X			
Hegar	X			
Hupp	X			
Veasey	X			

Total      6      aye  
                 0      nay  
                 0      present, not voting  
                 1      absent

CHAIR 

## **BILL ANALYSIS**

H.B. 1589  
By: Driver  
Law Enforcement  
Committee Report (Amended)

### **BACKGROUND AND PURPOSE**

Most local and state law enforcement agencies conduct pre-employment polygraph testing before hiring an applicant as a peace officer. The FBI, CIA, Secret Service and Bureau of Alcohol, Tobacco, Firearms and Explosives also conduct such testing. Pre-employment polygraph testing enables these departments to cull out undesirable candidates for commissioning as peace officers.

Currently, the Department of Public Safety does not administer pre-employment polygraph testing. Therefore, they are unable to use this additional tool to ascertain the character of potential officers. Officers who fail polygraph tests at other departments or who know they would be unable to pass such a test apply to the Department of Public Safety. In an effort to increase the collective professionalism of DPS officers as well as decrease the costs, liabilities and detrimental effects of employing exceptionable officers, HB 1589 requires the department to administer pre-employment polygraph tests to all applicants for commissioned officer or police communications operator positions.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Department of Public Safety in SECTION 2 of this bill.

### **ANALYSIS**

The bill amends Section 411.007(c) of the Government Code to provide that the new Section 411.0074 does not authorize the department to require an officer commissioned by the Department of Public Safety (the department) to take a polygraph examination.

The bill amends the Government Code by adding Section 411.0074 to require the department to require each applicant for a peace officer or police communications operator position to submit to a polygraph examination. The bill requires the department to use the results of a polygraph examination, under this section, as a factor in determining whether to employ an applicant for the position of a commissioned peace officer or police communications operator. The bill provides that this section does not apply to an applicant who is currently a peace officer of the department or a police communications operator.

The bill requires that the polygraph examination required by this section be administered by a polygraph examiner licensed under Chapter 1703 of the Occupations Code who is a peace officer commissioned by the department or has a minimum of two years of experience conducting employment polygraph examinations for a law enforcement agency.

The bill requires that the department and the polygraph examiner maintain the confidentiality of the results of the polygraph examination conducted under this section. The bill authorizes the department and the polygraph examiner to disclose the results in accordance with §1703.306 of the Occupations Code, as well as to disclose any admission of criminal conduct made during the examination to another appropriate governmental entity.

The bill requires the department to adopt reasonable rules for the administration of a polygraph examination and requires that these rules be in accordance with the guidelines of the American Polygraph Association or the American Association of Police Polygraphists.

The bill provides that the changes in law apply only to an applicant who submits an application for a position with the department on or after the effective date of this Act.

#### **EFFECTIVE DATE**

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2005.

#### **EXPLANATION OF AMENDMENTS**

Committee Amendment No. 1 requires that the department require an applicant for a peace officer or police communications operator position to submit to a polygraph examination before commissioning the applicant. Amendment No. 1 also requires that this examination be administered in accordance with rules adopted under subsection (e) and adds subsection (e) to require the department to adopt rules to specify the point in the hiring process at which the department will require a polygraph examination to be administered under this section and the manner in which it will be administered. The amendment also requires that rules relating to the administration of the polygraph be in accordance with the guidelines published by the American Polygraph Association or the American Association of Police Polygraphists.

## SUMMARY OF COMMITTEE ACTION

HB 1589

March 16, 2005      1:30PM      or upon final adjourn./recess

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Considered in public hearing  
Amendment(s) considered in committee  
Testimony taken in committee (See attached witness list.)  
Left pending in committee

March 22, 2005      upon final adjourn./recess

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Considered in formal meeting  
Amendment(s) considered in committee  
Reported favorably as amended

3

WITNESS LIST

HB 1589  
HOUSE COMMITTEE REPORT  
Law Enforcement Committee

March 16, 2005 - 1:30PM or upon final adjourn./recess

For:	Gaylor, Tom (Texas Municipal Police Association)
	Hawthorne, Brian (Dept. of Public Safety Officers Association)
	Holden, M.A., L.P.C, Eric J. (Texas Department of Public Safety Officers Association)
	Smith, Mike (Texas Department of Public Safety Officers Association)
On:	Davis, Tommy (Texas DPS)
	Ditucci, Frank (Texas Polygraph Examiners Board)
	Gougler, Michael (Texas DPS)

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**March 24, 2005**

**TO:** Honorable Joe Driver, Chair, House Committee on Law Enforcement

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE:** **HB1589** by Driver (Relating to the administration of polygraph examinations to certain applicants for positions in the Department of Public Safety.), **Committee Report 1st House, As Amended**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would amend the Government Code to require the Department of Public Safety to require each applicant for a peace officer or police communications operator position in the department to submit to the administration of a polygraph examination prior to being commissioned as a peace officer or employed as a police communications operator. The bill would take effect immediately if it receives a vote of two-thirds of all the members elected to each house. If the bill does not receive the vote necessary for immediate effect, the bill would take effect September 1, 2005.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:**

**LBB Staff:** JOB, KJG, VDS, SJ

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**March 10, 2005**

**TO:** Honorable Joe Driver, Chair, House Committee on Law Enforcement

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE:** **HB1589** by Driver (Relating to the administration of polygraph examinations to certain applicants for positions in the Department of Public Safety.), **As Introduced**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would amend the Government Code to require the Department of Public Safety to require each applicant for a peace officer or police communications operator position in the department to submit to the administration of a polygraph examination. The bill would take effect immediately if it receives a vote of two-thirds of all the members elected to each house. If the bill does not receive the vote necessary for immediate effect, the bill would take effect September 1, 2005.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 405 Department of Public Safety

**LBB Staff:** JOB, KJG, VDS, SJ

LIST OF HOUSE AMENDMENTS CONSIDERED TODAY

HB1589-Second Reading

<u>AMENDMENT#</u>	<u>AUTHOR</u>	<u>DESCRIPTION</u>	<u>ACTION</u>
1	Jackson, Jim	Comm Amdt	Adopted

ADOPTED



APR 28 2005

AMENDMENT NO. 1

Robert Hanes  
Chief Clerk  
House of Representatives

COMMITTEE AMENDMENT NO. 1

BY: Jackson, Jim

Amend H.B. No. 1589 as follows:

(1) On page 2, strike lines 7-10 and substitute the following:

→ (((Insert 1))) 1589a

(b) Before commissioning an applicant as a peace officer or employing an applicant for a police communications operator position, the department shall require the applicant to submit to the administration of a polygraph examination in accordance with rules adopted under Subsection (e).

(2) On page 3, strike lines 2-5 and substitute the following:

→ (((Insert 2))) 1589b

(e) The department shall adopt reasonable rules to specify the point in the hiring process at which the department shall require a polygraph examination to be administered under this section and the manner in which the examination shall be administered. Rules relating to the administration of a polygraph examination shall be adopted in accordance with the guidelines published by the American Polygraph Association or the American Association of Police Polygraphists.

**2ND READING  
ENGROSSMENT**

By: Driver

H.B. No. 1589

A BILL TO BE ENTITLED

AN ACT

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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(c) An applicant for a position in the department must be a United States citizen. An applicant may not be questioned regarding the applicant's political affiliation or religious faith or beliefs. The department may not prohibit an officer or employee of the department, while off duty and out of uniform, from placing a bumper sticker endorsing political activities or a candidate for political office on a personal vehicle, placing a campaign sign in the person's private yard, making a political contribution, or wearing a badge endorsing political activities or a candidate. An officer commissioned by the department may not be suspended, terminated, or subjected to any form of discrimination by the department because of the refusal of the officer to take a polygraph examination. Section 411.0074 does not authorize the department to require an officer commissioned by the department to take a polygraph examination.

SECTION 2. Subchapter A, Chapter 411, Government Code, is amended by adding Section 411.0074 to read as follows:

Sec. 411.0074. POLYGRAPH EXAMINATIONS FOR CERTAIN

F

# HOUSE ENGROSSMENT

By: Driver

H.B. No. 1589

## A BILL TO BE ENTITLED

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11 of the department, while off duty and out of uniform, from placing a  
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18 department because of the refusal of the officer to take a polygraph  
19 examination. Section 411.0074 does not authorize the department to  
20 require an officer commissioned by the department to take a  
21 polygraph examination.

22 SECTION 2. Subchapter A, Chapter 411, Government Code, is  
23 amended by adding Section 411.0074 to read as follows:

24 Sec. 411.0074. POLYGRAPH EXAMINATIONS FOR CERTAIN

1 APPLICANTS. (a) This section does not apply to:

2 (1) an applicant who is currently a peace officer of  
3 the department commissioned by the department; or

4 (2) an applicant for a police communications operator  
5 position who is currently employed by the department in another  
6 police communications operator position.

7 (b) Before commissioning an applicant as a peace officer or  
8 employing an applicant for a police communications operator  
9 position, the department shall require the applicant to submit to  
10 the administration of a polygraph examination in accordance with  
11 rules adopted under Subsection (e).

12 (c) The polygraph examination required by this section may  
13 only be administered by a polygraph examiner licensed under Chapter  
14 1703, Occupations Code, who:

15 (1) is a peace officer commissioned by the department;  
16 or

17 (2) has a minimum of two years of experience  
18 conducting preemployment polygraph examinations for a law  
19 enforcement agency.

20 (d) The department and the polygraph examiner shall  
21 maintain the confidentiality of the results of a polygraph  
22 examination administered under this section, except that:

23 (1) the department and the polygraph examiner may  
24 disclose the results in accordance with Section 1703.306,  
25 Occupations Code; and

26 (2) notwithstanding Section 1703.306, Occupations  
27 Code, the department may disclose any admission of criminal conduct

1 made during the course of an examination to another appropriate  
2 governmental entity.

3 (e) The department shall adopt reasonable rules to specify  
4 the point in the hiring process at which the department shall  
5 require a polygraph examination to be administered under this  
6 section and the manner in which the examination shall be  
7 administered. Rules relating to the administration of a polygraph  
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9 published by the American Polygraph Association or the American  
10 Association of Police Polygraphists.

11 (f) The department shall use the results of a polygraph  
12 examination under this section as a factor in determining whether  
13 to commission a peace officer or employ an applicant for the  
14 position of police communications operator.

15 SECTION 3. Section 411.0074, Government Code, as added by  
16 this Act, applies only to an applicant who submits an application  
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19 SECTION 4. This Act takes effect immediately if it receives  
20 a vote of two-thirds of all the members elected to each house, as  
21 provided by Section 39, Article III, Texas Constitution. If this  
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**LEGISLATIVE BUDGET BOARD**

Austin, Texas

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<b>No significant fiscal implication to the State is anticipated.</b>
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**Source Agencies:**

**LBB Staff:** JOB, KJG, VDS, SJ

**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

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**Source Agencies:** 405 Department of Public Safety

**LBB Staff:** JOB, KJG, VDS, SJ

2

1-1 By: Driver (Senate Sponsor - Williams) H.B. No. 1589  
1-2 (In the Senate - Received from the House May 2, 2005;  
1-3 May 3, 2005, read first time and referred to Committee on Criminal  
1-4 Justice; May 20, 2005, reported favorably by the following vote:  
1-5 Yeas 4, Nays 0; May 20, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to the administration of polygraph examinations to certain  
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1-29 amended by adding Section 411.0074 to read as follows:

1-30 Sec. 411.0074. POLYGRAPH EXAMINATIONS FOR CERTAIN  
1-31 APPLICANTS. (a) This section does not apply to:

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1-33 the department commissioned by the department; or

1-34 (2) an applicant for a police communications operator  
1-35 position who is currently employed by the department in another  
1-36 police communications operator position.

1-37 (b) Before commissioning an applicant as a peace officer or  
1-38 employing an applicant for a police communications operator  
1-39 position, the department shall require the applicant to submit to  
1-40 the administration of a polygraph examination in accordance with  
1-41 rules adopted under Subsection (e).

1-42 (c) The polygraph examination required by this section may  
1-43 only be administered by a polygraph examiner licensed under Chapter  
1-44 1703, Occupations Code, who:

1-45 (1) is a peace officer commissioned by the department;  
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1-47 (2) has a minimum of two years of experience  
1-48 conducting preemployment polygraph examinations for a law  
1-49 enforcement agency.

1-50 (d) The department and the polygraph examiner shall  
1-51 maintain the confidentiality of the results of a polygraph  
1-52 examination administered under this section, except that:

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1-56 (2) notwithstanding Section 1703.306, Occupations  
1-57 Code, the department may disclose any admission of criminal conduct  
1-58 made during the course of an examination to another appropriate  
1-59 governmental entity.

1-60 (e) The department shall adopt reasonable rules to specify  
1-61 the point in the hiring process at which the department shall  
1-62 require a polygraph examination to be administered under this  
1-63 section and the manner in which the examination shall be  
1-64 administered. Rules relating to the administration of a polygraph

examination shall be adopted in accordance with the guidelines published by the American Polygraph Association or the American Association of Police Polygraphists.

(f) The department shall use the results of a polygraph examination under this section as a factor in determining whether to commission a peace officer or employ an applicant for the position of police communications operator.

SECTION 3. Section 411.0074, Government Code, as added by this Act, applies only to an applicant who submits an application for a position in the Department of Public Safety of the State of Texas on or after the effective date of this Act.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

\* \* \* \* \*

**FAVORABLE  
SENATE COMMITTEE REPORT ON**

SB   SCR   SJR   SR   HB   HCR   HJR   1589  
By Driver / Williams  
(Author/Senate Sponsor)  
5/20/05  
(date)

We, your Committee on CRIMINAL JUSTICE, to which was referred the attached measure,  
have on 5/19/05, had the same under consideration and I am instructed to report it  
(date of hearing)  
back with the recommendation (s) that it:

☒ do pass and be printed

☐ do pass and be ordered not printed

☒ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☒ yes ☐ no

A revised fiscal note was requested. ☐ yes ☐ no

An actuarial analysis was requested. ☐ yes ☐ no

Considered by subcommittee. ☐ yes ☐ no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator Whitmire, Chair	<input checked="" type="checkbox"/>			
Senator Seliger, Vice-Chair	<input checked="" type="checkbox"/>			
Senator Carona			<input checked="" type="checkbox"/>	
Senator Ellis	<input checked="" type="checkbox"/>			
Senator Hinojosa	<input checked="" type="checkbox"/>			
Senator Ogden			<input checked="" type="checkbox"/>	
Senator Williams			<input checked="" type="checkbox"/>	
TOTAL VOTES	<u>4</u>	<u>0</u>	<u>3</u>	<u>0</u>

**COMMITTEE ACTION**

S260 Considered in public hearing  
S270 Testimony taken

\_\_\_\_\_  
COMMITTEE CLERK

\_\_\_\_\_  
CHAIR

Paper clip the original and one copy of this signed form to the original bill  
Retain one copy of this form for Committee files

WITNESS LIST

HB 1589

SENATE COMMITTEE REPORT

Criminal Justice

May 19, 2005 - 1:30PM

Registering, but not testifying:

For: Gaylor, Tom Deputy Executive Director (Texas Municipal Police Association), Austin, TX  
Smith, Mike District Representative (Texas Department of Public Safety Officers Association), Austin, TX

On: Hawkins, Gene Commander (Texas Department of Public Safety), Austin, TX

## **BILL ANALYSIS**

Senate Research Center

H.B. 1589  
By: Driver (Williams)  
Criminal Justice  
5/18/2005  
Engrossed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

Most local and state law enforcement agencies conduct pre-employment polygraph testing before hiring an applicant as a peace officer. The FBI, CIA, Secret Service, and Bureau of Alcohol, Tobacco, Firearms, and Explosives also conduct such testing. Pre-employment polygraph testing enables these agencies to cull out undesirable candidates for commissioning as peace officers.

Currently, the Department of Public Safety does not administer pre-employment polygraph testing. Therefore, they are unable to use this additional tool to ascertain the character of potential officers. Officers who fail polygraph tests at other agencies or who know they would be unable to pass such a test apply to the Department of Public Safety. In an effort to increase the collective professionalism of DPS officers as well as decrease the costs, liabilities and detrimental effects of employing objectionable officers, H.B. 1589 requires the department to administer pre-employment polygraph tests to all applicants for commissioned officer or police communications operator positions.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Department of Public Safety in SECTION 2 (Section 411.0074, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 411.007(c), Government Code, to provide that Section 411.0074 does not authorize the Department of Public Safety (DPS) to require an officer commissioned by DPS to take a polygraph examination.

SECTION 2. Amends Subchapter A, Chapter 411, Government Code, by adding Section 411.0074, as follows:

Sec. 411.0074. POLYGRAPH EXAMINATIONS FOR CERTAIN APPLICANTS. (a) Provides that this section does not apply to certain individuals.

(b) Requires DPS to require an applicant to submit to the administration of a polygraph examination in accordance with rules adopted under Subsection (e) before commissioning the applicant as a peace officer or employing an applicant for a police communications operator position.

(c) Authorizes the polygraph examination required by this section to only be administered by certain licensed polygraph examiners.

(d) Requires DPS and the polygraph examiner to maintain the confidentiality of the results of a polygraph examination administered under this section, with certain exceptions.

(e) Requires DPS to adopt reasonable rules to specify the point in the hiring process at which it shall require a polygraph examination to be administered under this section and the manner in which the examination shall be administered. Requires rules relating to the administration of a polygraph examination to be adopted in accordance with the guidelines published by the American Polygraph Association or the American Association of Police Polygraphists.

(f) Requires DPS to use the results of a polygraph examination under this section as a factor in determining whether to commission a peace officer or employ an applicant for the position of police communications operator.

SECTION 3. Makes application of Section 411.0074, Government Code, as added by this Act, prospective.

SECTION 4. Effective date: upon passage or September 1, 2005.

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**May 18, 2005**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: HB1589** by Driver (Relating to the administration of polygraph examinations to certain applicants for positions in the Department of Public Safety.), **As Engrossed**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
--

The bill would amend the Government Code to require the Department of Public Safety (DPS) before commissioning an applicant as a peace officer or employing an applicant for a police communications operator position to require each applicant to submit to the administration of a polygraph examination prior. The bill would take effect immediately if it receives a vote of two-thirds of all the members elected to each house. If the bill does not receive the vote necessary for immediate effect, the bill would take effect September 1, 2005.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:**

**LBB Staff:** JOB, KJG, VDS, SJ

**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**March 24, 2005**

**TO:** Honorable Joe Driver, Chair, House Committee on Law Enforcement

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE:** **HB1589** by Driver (Relating to the administration of polygraph examinations to certain applicants for positions in the Department of Public Safety.), **Committee Report 1st House, As Amended**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would amend the Government Code to require the Department of Public Safety to require each applicant for a peace officer or police communications operator position in the department to submit to the administration of a polygraph examination prior to being commissioned as a peace officer or employed as a police communications operator. The bill would take effect immediately if it receives a vote of two-thirds of all the members elected to each house. If the bill does not receive the vote necessary for immediate effect, the bill would take effect September 1, 2005.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:**

**LBB Staff:** JOB, KJG, VDS, SJ

**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**March 10, 2005**

**TO:** Honorable Joe Driver, Chair, House Committee on Law Enforcement

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE:** **HB1589** by Driver (Relating to the administration of polygraph examinations to certain applicants for positions in the Department of Public Safety.), **As Introduced**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would amend the Government Code to require the Department of Public Safety to require each applicant for a peace officer or police communications operator position in the department to submit to the administration of a polygraph examination. The bill would take effect immediately if it receives a vote of two-thirds of all the members elected to each house. If the bill does not receive the vote necessary for immediate effect, the bill would take effect September 1, 2005.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 405 Department of Public Safety

**LBB Staff:** JOB, KJG, VDS, SJ

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**79TH LEGISLATIVE REGULAR SESSION**

**May 18, 2005**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: HB1589** by Driver (Relating to the administration of polygraph examinations to certain applicants for positions in the Department of Public Safety.), **As Engrossed**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.


**Source Agencies:**

**LBB Staff:** JOB, GG

## REQUEST FOR LOCAL & UNCONTESTED CALENDAR PLACEMENT

SENATOR CHRIS HARRIS, CHAIRMAN  
SENATE COMMITTEE ON ADMINISTRATION

Notice is hereby given that HB 1589, by Driver/Williams,  
(Bill No.) (Author/Sponsor),  
was heard by the Committee on Criminal Justice on May 19, 2005,  
and reported out with the recommendation that it be placed on the Local and Uncontested Calendar.

  
(Clerk of the reporting committee)

**IMPORTANT: A COPY OF THIS FORM MUST BE ATTACHED TO A COMMITTEE PRINTED VERSION OF THE BILL OR RESOLUTION AND SHOULD BE DELIVERED TO THE ADMINISTRATION COMMITTEE OFFICE, E1.714. DEADLINES FOR SUBMITTING BILLS AND RESOLUTIONS WILL BE ANNOUNCED ON A REGULAR BASIS.**

**ENROLLED**

H.B. No. 1589

AN ACT

relating to the administration of polygraph examinations to certain applicants for positions in the Department of Public Safety.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 411.007(c), Government Code, is amended to read as follows:

(c) An applicant for a position in the department must be a United States citizen. An applicant may not be questioned regarding the applicant's political affiliation or religious faith or beliefs. The department may not prohibit an officer or employee of the department, while off duty and out of uniform, from placing a bumper sticker endorsing political activities or a candidate for political office on a personal vehicle, placing a campaign sign in the person's private yard, making a political contribution, or wearing a badge endorsing political activities or a candidate. An officer commissioned by the department may not be suspended, terminated, or subjected to any form of discrimination by the department because of the refusal of the officer to take a polygraph examination. Section 411.0074 does not authorize the department to require an officer commissioned by the department to take a polygraph examination.

SECTION 2. Subchapter A, Chapter 411, Government Code, is amended by adding Section 411.0074 to read as follows:

Sec. 411.0074. POLYGRAPH EXAMINATIONS FOR CERTAIN

1 APPLICANTS. (a) This section does not apply to:

2 (1) an applicant who is currently a peace officer of  
3 the department commissioned by the department; or

4 (2) an applicant for a police communications operator  
5 position who is currently employed by the department in another  
6 police communications operator position.

7 (b) Before commissioning an applicant as a peace officer or  
8 employing an applicant for a police communications operator  
9 position, the department shall require the applicant to submit to  
10 the administration of a polygraph examination in accordance with  
11 rules adopted under Subsection (e).

12 (c) The polygraph examination required by this section may  
13 only be administered by a polygraph examiner licensed under Chapter  
14 1703, Occupations Code, who:

15 (1) is a peace officer commissioned by the department;  
16 or

17 (2) has a minimum of two years of experience  
18 conducting preemployment polygraph examinations for a law  
19 enforcement agency.

20 (d) The department and the polygraph examiner shall  
21 maintain the confidentiality of the results of a polygraph  
22 examination administered under this section, except that:

23 (1) the department and the polygraph examiner may  
24 disclose the results in accordance with Section 1703.306,  
25 Occupations Code; and

26 (2) notwithstanding Section 1703.306, Occupations  
27 Code, the department may disclose any admission of criminal conduct

1 made during the course of an examination to another appropriate  
2 governmental entity.

3 (e) The department shall adopt reasonable rules to specify  
4 the point in the hiring process at which the department shall  
5 require a polygraph examination to be administered under this  
6 section and the manner in which the examination shall be  
7 administered. Rules relating to the administration of a polygraph  
8 examination shall be adopted in accordance with the guidelines  
9 published by the American Polygraph Association or the American  
10 Association of Police Polygraphists.

11 (f) The department shall use the results of a polygraph  
12 examination under this section as a factor in determining whether  
13 to commission a peace officer or employ an applicant for the  
14 position of police communications operator.

15 SECTION 3. Section 411.0074, Government Code, as added by  
16 this Act, applies only to an applicant who submits an application  
17 for a position in the Department of Public Safety of the State of  
18 Texas on or after the effective date of this Act.

19 SECTION 4. This Act takes effect immediately if it receives  
20 a vote of two-thirds of all the members elected to each house, as  
21 provided by Section 39, Article III, Texas Constitution. If this  
22 Act does not receive the vote necessary for immediate effect, this  
23 Act takes effect September 1, 2005.

H.B. No. 1589

---

President of the Senate

---

Speaker of the House

I certify that H.B. No. 1589 was passed by the House on April 29, 2005, by the following vote: Yeas 141, Nays 0, 2 present, not voting.

---

Chief Clerk of the House

I certify that H.B. No. 1589 was passed by the Senate on May 25, 2005, by the following vote: Yeas 31, Nays 0.

---

Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

---

Governor

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 1589<sup>✓</sup> was passed by the House  
(1)

on April 29<sup>✓</sup>, 2005, by the following vote:  
(2)

Yeas 141<sup>✓</sup>, Nays 0<sup>✓</sup>, 2 present, not voting<sup>✓</sup>  
(3) (4)

\_\_\_\_\_  
Chief Clerk of the House

I certify that H.B. No. 1589<sup>✓</sup> was passed by the Senate

on May 25<sup>✓</sup>, 2005, by the following vote:  
(5)

Yeas 31<sup>✓</sup>, Nays 0<sup>✓</sup>  
(6) (7)

\_\_\_\_\_  
Secretary of the Senate

APPROVED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

\*\*\*\* Preparation: CT24

79TH LEGISLATURE

COAUTHOR AUTHORIZATION

(please request your coauthors to sign this form  
in lieu of the front or the back of the original bill)

Bill or Resolution Number: HB 1589

[Signature]  
signature of **primary** author

Driver  
printed name of **primary** author

2/24/05  
Date

PERMISSION TO SIGN HB 1589 HAS BEEN GIVEN TO (check only one of the following):  
(bill or resolution #)

☒ ALL REPRESENTATIVES  
THE FOLLOWING REPRESENTATIVE(S): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I authorize the Chief Clerk to include my name as a coauthor of the legislation indicated above:

<u>A2100 Allen, Alma</u>	<u>                    </u> Date	<u>A2435 Coleman</u>	<u>                    </u> Date	<u>A2800 Escobar</u>	<u>                    </u> Date
<u>A2115 Allen, Ray</u>	<u>                    </u> Date	<u>A2450 Cook, Byron</u>	<u>                    </u> Date	<u>A2795 Farabee</u>	<u>                    </u> Date
<u>A2125 Alonzo</u>	<u>                    </u> Date	<u>A2565 Cook, Robert "Robby"</u>	<u>                    </u> Date	<u>A2810 Farrar</u>	<u>                    </u> Date
<u>A2150 Anchia</u>	<u>                    </u> Date	<u>A2595 Corte</u>	<u>                    </u> Date	<u>A2840 Flores</u>	<u>                    </u> Date
<u>A2155 Anderson</u>	<u>                    </u> Date	<u>A2605 Crabb</u>	<u>                    </u> Date	<u>A2850 Flynn</u>	<u>                    </u> Date
<u>A2160 Bailey</u>	<u>                    </u> Date	<u>A2610 Craddick</u>	<u>                    </u> Date	<u>A2860 Frost</u>	<u>                    </u> Date
<u>A2170 Baxter</u>	<u>                    </u> Date	<u>A2640 Crownover</u>	<u>                    </u> Date	<u>A2920 Gallego</u>	<u>                    </u> Date
<u>A2205 Berman</u>	<u>                    </u> Date	<u>A2620 Davis, John</u>	<u>                    </u> Date	<u>A2960 Gattis</u>	<u>                    </u> Date
<u>A2220 Blake</u>	<u>                    </u> Date	<u>A2625 Davis, Yvonne</u>	<u>                    </u> Date	<u>A2945 Geren</u>	<u>                    </u> Date
<u>A2230 Bohac</u>	<u>                    </u> Date	<u>A2635 Dawson</u>	<u>                    </u> Date	<u>A2935 Giddings</u>	<u>                    </u> Date
<u>A2250 Bonnen</u>	<u>                    </u> Date	<u>A2680 Delisi</u>	<u>                    </u> Date	<u>A2910 Gonzales</u>	<u>                    </u> Date
<u>A2280 Branch</u>	<u>                    </u> Date	<u>A3385 Denny</u>	<u>                    </u> Date	<u>A4660 Gonzalez Toureilles</u>	<u>                    </u> Date
<u>A2265 Brown, Betty</u>	<u>                    </u> Date	<u>A2690 Deshotel</u>	<u>                    </u> Date	<u>A2985 Goodman</u>	<u>                    </u> Date
<u>A2270 Brown, Fred</u>	<u>                    </u> Date	<u>A2705 Driver</u>	<u>                    </u> Date	<u>A2990 Goolsby</u>	<u>                    </u> Date
<u>A2255 Burnam</u>	<u>                    </u> Date	<u>A2665 Dukes</u>	<u>                    </u> Date	<u>A3010 Griggs</u>	<u>                    </u> Date
<u>A2295 Callegari</u>	<u>                    </u> Date	<u>A2660 Dunnam</u>	<u>                    </u> Date	<u>A3020 Grusendorf</u>	<u>                    </u> Date
<u>A2290 Campbell</u>	<u>                    </u> Date	<u>A2650 Dutton</u>	<u>                    </u> Date	<u>A3045 Guillen</u>	<u>                    </u> Date
<u>A2490 Casteel</u>	<u>                    </u> Date	<u>A2770 Edwards</u>	<u>                    </u> Date	<u>A3035 Haggerty</u>	<u>                    </u> Date
<u>A2495 Castro</u>	<u>                    </u> Date	<u>A2775 Eiland</u>	<u>                    </u> Date	<u>A3050 Hamilton</u>	<u>                    </u> Date
<u>A2585 Chavez</u>	<u>                    </u> Date	<u>A2780 Eissler</u>	<u>                    </u> Date	<u>A2695 Hamric</u>	<u>                    </u> Date
<u>A2480 Chisum</u>	<u>                    </u> Date	<u>A2785 Elkins</u>	<u>                    </u> Date	<u>A3160 Hardcastle</u>	<u>                    </u> Date

A3165 Harper-Brown	Date	A3540 Laubenberg	Date	A4230 Quintanilla	Date
A3170 Hartnett	Date	A3560 Leibowitz	Date	A4215 Raymond	Date
A3190 Hegar	Date	A3620 Luna	Date	A4236 Reyna	Date
A3140 Herrero	Date	A3715 Madden	Date	A4220 Riddle	Date
A3250 Hilderbran	Date	A3780 Martinez	Date	A4250 Ritter	Date
A3275 Hill	Date	A2835 Martinez Fischer	Date	A4270 Rodriguez	Date
A3305 Hochberg	Date	A3665 McCall	Date	A4350 Rose	Date
A3290 Hodge	Date	A3650 McClendon	Date	A4420 Seaman	Date
A3325 Homer	Date	A3845 McReynolds	Date	A4525 Smith, Todd	Date
A3320 Hope	Date	A3830 Menendez	Date	A4540 Smith, Wayne	Date
A3330 Hopson	Date	A3840 Merritt	Date	A4530 Smithee	Date
A3315 Howard	Date	A3835 Miller	Date	A4550 Solis	Date
A3340 Hughes	Date	A3855 Moreno, Joe	Date	A4505 Solomons	Date
A3355 Hunter	Date	A3860 Moreno, Paul	Date	A4545 Strama	Date
A3360 Hupp	Date	A3870 Morrison	Date	A4570 Swinford	Date
A3375 Isett	Date	A3865 Mowery	Date	A4585 Talton	Date
A3350 Jackson	Date	A3885 Naishtat	Date	A4600 Taylor	Date
A3405 Jones, Delwin	Date	A3895 Nixon	Date	A4630 Thompson	Date
District 121	Date	A3900 Noriega	Date	A4650 Truitt	Date
A3400 Jones, Jesse	Date	A3880 Oliveira	Date	A4685 Turner	Date
A3475 Keel	Date	A3886 Olivo	Date	A4695 Uresti	Date
A3410 Keffer, Bill	Date	A3930 Orr	Date	A4700 Van Arsdale	Date
A3480 Keffer, Jim	Date	A3945 Otto	Date	A4725 Veasey	Date
A3470 King, Phil	Date	A4100 Paxton	Date	A4800 Villarreal	Date
A3465 King, Tracy	Date	A4140 Pena	Date	A4900 Vo	Date
A3495 Kolkhorst	Date	A4160 Phillips	Date	A4995 West	Date
A3485 Krusee	Date	A4180 Pickett	Date	A4985 Wong	Date
A3450 Kuempel	Date	A4185 Pitts	Date	A5005 Woolley	Date
A3510 Laney	Date	A4200 Puente	Date	A5150 Zedler	Date

H.B. No.

1589

A BILL TO BE ENTITLED  
AN ACT

By

DRIVER

relating to the administration of polygraph examinations to certain applicants for positions in the Department of Public Safety.

FEB 24 2005

Filed with the Chief Clerk

MAR 01 2005

Read first time and referred to Committee on Law Enforcement

MAR 22 2005

Reported favorably (as amended)  
(~~as substituted~~)

APR 14 2005

Sent to Committee on (Calendars)

APR 28 2005

Read second time (~~comm. subst.~~) (amended); passed to third reading (~~failed~~) by a (non-record vote)  
(~~record vote of~~        yeas,        nays,        present, not voting)

Constitutional rule requiring bills to be read on three several days suspended (failed to suspend)  
by a vote of        yeas,        nays,        present, not voting

APR 29 2005

Read third time (~~amended~~); finally passed (~~failed to pass~~) by a (~~non-record vote~~)  
(record vote of 141 yeas, 0 nays, 2 present, not voting)

Engrossed

MAY 02 2005

Sent to Senate

Robert Haney  
CHIEF CLERK OF THE HOUSE

OTHER HOUSE ACTION:

MAY 02 2005

Received from the House

MAY 03 2005

Read and referred to Committee on

CRIMINAL JUSTICE

MAY 20 2005

Reported favorably

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time

Ordered not printed

MAY 25 2005

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by (unanimous consent)  
(       yeas,        nays)

MAY 25 2005

Read second time,       , and passed to third reading by (~~unanimous consent~~)  
(       yeas,        nays) (a viva voce vote)

MAY 25 2005

Senate and Constitutional 3 Day Rules suspended by a vote of 31 yeas, 0 nays

MAY 25 2005

Read third time,       , and passed by a (viva voce vote)  
(31 yeas, 0 nays)

MAY 25 2005

Returned to the House

Latey Spaw  
SECRETARY OF THE SENATE

OTHER SENATE ACTION:

**MAY 25 2005**

Returned from the Senate ~~(substituted)~~  
(with amendments)

House concurred in Senate amendments by a (non-record vote)  
(record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting)

House refused to concur in Senate amendments and requested the appointment of a conference committee  
by a (non-record vote) (record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting)

House conferees appointed: \_\_\_\_\_, Chair; \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

Senate granted House request. Senate conferees appointed: \_\_\_\_\_, Chair;  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

Conference committee report adopted (rejected) by the House by a (non-record vote)  
(record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting)

Conference committee report adopted (rejected) by the Senate by a (viva voce vote)  
(record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays)

05 APR 13 PM 10: 52

HOUSE OF REPRESENTATIVES